



Policies and Procedures

Subject: Verifying the Identity and Authority of Person Requesting Disclosure of PHI

Policy Number: HIPAA 4.8

Effective Date: 7/10/04

Entity Responsible: Division of General Counsel

Revision Date: 1/11/18

1. Purpose:

To provide instruction and guidance on verifying the identity and authority of a person requested the use or disclosure of protected health information (PHI) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and Tennessee state law.

2. Policy:

- 2.1: Before disclosing any PHI, members of the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) and the Regional Mental Health Institutes (RMHIs) workforce:
 - 2.1.1: Must verify the identity of any person requesting the disclosure of PHI, and the authority of that person to have access to the PHI, if the identity or authority of the person is not known to the employee;
 - 2.1.2: Must obtain necessary documentation from the person requesting the disclosure of PHI as described below.
 - 2.1.3: Must file originals, or copies if originals are unavailable, of all requests, authorizations, and any supporting documentation in the medical record of the person whose PHI has been requested or disclosed.

- 2.2: The methods listed below are not all inclusive. If any problems are encountered or the workforce member is unsure about whether to disclose the PHI or not, the workforce member should consult with the RMHI Privacy Officer if the request involves the RMHI or the TDMHSAS Privacy Officer if the request involves Central Office prior to disclosing the PHI.

3. Procedure/ Responsibility:

- 3.1: When a member of the TDMHSAS or the RMHI workforce receives a request for disclosure of PHI, the workforce member shall forward the request to the appropriate Privacy Officer. If a verbal request for PHI is received, the workforce member should inform the individual that state law requires the request to be in writing. The written request must meet the same requirements of a valid authorization. (*See* TDMHSAS HIPAA Policy and Procedure, 4.1)
- 3.3: Prior to releasing PHI, the Privacy Officer handling the request must verify the identity of the person requesting disclosure of PHI if the identity is not known to the Privacy Officer. Acceptable methods of verifying the identity of someone requesting PHI include:
- 3.3.1: If a service recipient or former service recipient makes an in-person request for disclosure of his or her PHI, the service recipient or former service recipient must show a valid picture identification, provide his or her date of birth, and his or her social security number. If service recipient or former service recipient makes a request by postal mail, fax, or e-mail, the document received must meet the same requirements of a valid authorization. *See* TDMHSAS HIPAA Policy 4.1. The service recipient or former service recipient may be asked to provide copies of valid picture identification, including documentation showing his or date of birth, and social security number.
- 3.3.2: If a parent, legal guarding, legal custodian, or legal representative makes an in-person request for disclosure of a service recipient's or former service recipient's PHI, the individual must a valid picture identification, and appropriate court or other legal documents showing his or her relationship to the service recipient or former service recipient or his or her authority to act on behalf of service recipient or former service recipient. If such request is made by postal mail, fax, or e-mail, the document received must meet the same requirements of a valid authorization. The parent, legal guardian, legal custodian, or legal representative may be asked to provide valid photo identification and appropriate legal documents showing his or her relationship to the service

recipient or former service recipient or his or her authority to act on behalf of service recipient or former service recipient.

- 3.3.3: If a requester is a public official who makes an in-person request for disclosure of a service recipient's or former service recipient's PHI, the individual must show his or her agency identification card, badge, or other proof of government employment. If a public official makes such request via postal mail, fax, or e-mail, the document received must meet the same requirements of a valid authorization and be on the appropriate government letterhead as acceptable verification of identity. If the disclosure of PHI requires consent of the service recipient or former service recipient, the person requesting the disclosure shall be provided with a copy of TDMHSAS's Form "Authorization to Release Confidential Information" or directed to where one can be obtained online at: <https://www.tn.gov/behavioral-health/mental-health---substance-abuse-law/mental-health---substance-abuse-law/legal-forms.html>.
- 3.3.4: If a requester is a person acting on behalf of public official who makes an in-person request for disclosure of the service recipient's or former service recipient's PHI, the individual must provide a written statement on government letterhead that the person is acting under government's authority, or other documentation that establishes that the person is acting on behalf of the public official, as acceptable verification of identity. If person makes such request via postal mail, fax, or email, the written request must meet the same requirements of a valid authorization and be accompanied by a written statement on government letterhead that the person is acting under government's authority, or other documentation that establishes that the person is acting on behalf of the public official. If the disclosure of PHI requires consent of the service recipient, or former service recipient whose records are being requested, the person requesting the disclosure of PHI shall be provided with a copy of TDMHSAS's Form "Authorization to Release Confidential Information" or directed to where one can be obtained online at: <https://www.tn.gov/behavioral-health/mental-health---substance-abuse-law/mental-health---substance-abuse-law/legal-forms.html>.
- 3.3.5: If a requester is any person other than those specified above, and this person makes an in-person request for disclosure of service recipient or former service recipient's PHI, the individual must show a valid picture id, and when required (if requester is someone other than parent), appropriate court or legal documents showing his or her relationship to the service recipient, or former service recipient, and when required (if requester is

someone other than parent), appropriate documents to show his or her authority to act on behalf of service recipient or former service recipient. If this person makes a request via postal mail, fax, or email, the written request must meet same requirements for valid authorization. This individual may be contacted and be asked to provide a copy of his or her valid identification, and when required, appropriate court or other legal documents showing his or her relationship to the service recipient or former service recipient, and when required, appropriate documents to show his or her authority to act on behalf of service recipient or former service recipient as acceptable verification of identity. If disclosure of PHI requires consent of service recipient or former service recipient whose records are being requested, the person requesting the disclosure of PHI shall be provided with a copy of TDMHSAS's Form "Authorization to Release Confidential Information" or directed to where one can be obtained online at: <https://www.tn.gov/behavioral-health/mental-health---substance-abuse-law/mental-health---substance-abuse-law/legal-forms.html>.

- 3.4: In addition to verifying the identity of the person requesting disclosure of PHI, person must also have authority to access PHI.
- 3.5: Acceptable methods of verifying authority for particular requestors include:
 - 3.5.1: If requester is a service recipient or former service recipient, after identity has been confirmed, authority does not have to be verified since service recipient or former service recipient has right of access to review, and copy his or own PHI under certain circumstances. *See* TDMHSAS HIPAA Policy 4.7.
 - 3.5.2: If the person requesting disclosure of PHI is the service recipient's, or former service recipient's, parent, legal guardian, legal custodian, or legal representative, the authority to receive PHI may be verified by (1) requiring the parent to show a valid picture identification, and asking for the date of birth or social security number of the service recipient or former service recipient, (2) requiring the legal guarding, legal custodian, or legal representative to show appropriate court or other legal documents showing his or her relationship to the service recipient or former service recipient and stating his or her authority to act on the service recipient's or former service recipient's behalf.
 - 3.5.3: If requester is a public official or a person acting on behalf of a public official, or a law enforcement official, the authority to access PHI may be

verified by viewing a court order or other legal process under which the request is made.

3.5.3.1: Under Tennessee law, a subpoena alone is not sufficient authority to release PHI. The TDMHSAS Privacy Officer or the RMHI Privacy Officer must be consulted before PHI is disclosed when such disclosure involves public officials, those acting on behalf of public officials, or law enforcement officials. *See* TDMHSAS HIPAA Policy 4.6.

3.5.4: If the person requesting disclosure of PHI is any person other than those specified above, the authority of those individuals to access PHI must be verified in consultation with the TDMHSAS Privacy Officer or the RMHI Privacy Officer or the RMHI attorney by reviewing documentation provided by person as verification of authority to access PHI.

3.6: All disclosures of PHI must be recorded on the disclosure log kept in the medical record of the person whose PHI was disclosed. (*See* TDMHSAS HIPAA Policy 4.8)

3.7: Any and all documentation created, collected, copied, or distributed in carrying out the provisions of this Policy must be filed in the medical record of the person whose PHI was requested or disclosed.

3.7.1: These records must be preserved for a minimum of ten (10) years after service recipient was discharged from the facility or ended treatment.

3.7.2: If these records involve a service recipient or former service recipient who ended their treatment or was discharged from the facility, these records must be preserved for a minimum of ten (10) years after the service recipient's eighteenth (18) birthday.

4.0 Other Considerations

4.1: Authority

45 CFR 164.514(h)(1)

Approved:

Marie Williams
Commissioner

1-11-18
Date